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April 15, 2013

The Honorable Kevin Brady – Chair
The Honorable Mike Thompson – Vice Chair
Energy Tax Reform Working Group
House Committee on Ways & Means
U.S. House of Representatives
Washington, D.C. 20515

Energy Working Group Chair Brady, Vice Chair Thompson and members of the Committee:

On behalf of the Energy Recovery Council, I am pleased to submit these comments to the Committee as it considers essential reforms to federal tax laws relating to renewable energy. The waste-to-energy industry plays an important role in communities across the country and has great potential in even more areas, which makes the Committee's work on these issues critically important.

The Energy Recovery Council is the national trade association representing the companies and local governments that own and operate, and provide goods and services to, waste-to-energy facilities. These facilities produce clean, renewable energy through the combustion of municipal solid waste in specially designed power plants equipped with the most modern pollution control equipment to clean emissions. Trash volume is reduced by 90% and the remaining residue is safely reused or disposed in landfills. There are 85 waste-to-energy plants operating in 23 states managing about 95,000 tons of MSW each day. Waste-to-energy facilities in the United States have a baseload electric capacity of approximately 2,700 megawatts to meet the power needs of nearly two million homes while serving the trash disposal needs of more than 36 million people.

Federal policy has long treated waste-to-energy as a technology which can sustainably manage solid waste, generate baseload renewable energy, reduce greenhouse gas emissions, and create and sustain high paying jobs. While well intentioned, policies such as the federal section 45 production tax credit have done little to stimulate waste-to-energy growth in America because they are not designed to promote facilities that have very long development lead times. Once a decision is made to develop a waste-to-energy facility, a company must negotiate contracts to secure the waste stream, undertake a lengthy permitting process, and finally construct the facility. This process can take 5-8 years. Historical short term extensions of the production tax credit have never left developers in a position where they knew at the beginning of the development process whether they would eventually be eligible for the credit. As a result, no privately-owned waste-to-energy facility has been developed since section 45(d)(7) was added to the tax code.

The Energy Recovery Council commends the Ways and Means Committee for undertaking this effort related to comprehensive tax reform to promote a candid discussion around renewable energy tax reform. While the PTC has worked for other industries, it has not worked well for waste-to-energy or for other technologies with long development lead times. Without a tax

policy that promotes a diverse mix of generating technologies, the market will choose the lowest cost source, which is currently natural gas. It would be a mistake to sacrifice fuel diversification, while ignoring other benefits that can be obtained, including promoting baseload power, reducing or avoiding the emission of carbon dioxide and other greenhouse gases, and recovering energy from waste. These benefits will not be realized absent federal policy.

The production tax credit has not worked well for all technologies because all technologies face different development challenges in the marketplace. Congress acknowledged this issue in the American Taxpayer Relief Act of 2012 by changing the eligibility for the PTC from "placed in service" to "begin construction". However, waste-to-energy is the only renewable technology that must negotiate contracts with local governments for the fuel needed to run the facility. This is a time-consuming, yet critical component in obtaining financing and making the project a reality. With short-term extensions, even a "begin construction" trigger will make it extremely difficult, if not impossible, to incentivize new development of waste-to-energy facilities.

It is our work with local governments and the management of solid waste that makes waste-to-energy significantly different than other technologies. Examples of the development activities for a waste-to-energy facility undertaken in the first year include: preparation of a Solid Waste Management Plan; undertaking waste studies for quantity and quality; convening public hearings to approve the Solid Waste Management Plan; preparing request for proposal document, including draft contracts; implement a zoning and site location process; and obtaining local government legal approvals for proceeding with the project including city and/or county public hearings, binding votes, and public comment periods, and other additional requirements prescribed in public procurement laws.

Undertaking these activities without knowing if a PTC will be available comes with significant financial risk. Communities that embark on these activities engage their citizens early on and communicate the long-term benefits of a waste-to-energy project, as well as the near-term costs. Factoring in legal, architect/engineer, environmental, and financial consultation, it is common for community leaders to seek approval from their electorate for front-end expenditures in excess of $500,000. In addition, a waste-to-energy vendor incurs significant costs in responding to the request for proposal in designing equipment and processes, site layouts, preliminary environmental reviews, as well as energy, financing and potential property acquisition costs. Typical expenditures incurred by the vendor exceed $2 million, irrespective of the size of the project.

As the working group and the Committee as a whole continue to work on comprehensive tax reform, the Energy Recovery Council makes the following recommendations:

- Tax incentive policy should be used to drive development of a diverse mix of electric generating sources.

- Long-term or permanent renewable tax policies should be enacted to incentivize the development of baseload renewable power sources, such as waste-to-energy, in addition to intermittent renewable sources which are currently the primary beneficiaries of existing renewable tax policies.

- Congress should recognize the unique needs of each of the renewable technologies to ensure that the tax code takes into account the unique attributes of each resource and its development timeline.

- Congress should harmonize the credit rate for all technologies under Section 45.

With respect to the unique needs of waste-to-energy specifically, the Energy Recovery Council proposes that Congress allow waste-to-energy facilities that have entered into a binding contract with one or more municipalities to design, build and operate a waste-to-energy facility to be eligible for tax incentives. The unique public-private nature of waste-to-energy plant project development involves significant steps and commitments by both companies and local governments that constitute a basis for starting construction of the facility.

Again, thank you for the opportunity to provide these comments to the working group and the Committee. If you need any further information, or have any questions, please feel free to contact me directly at [redacted] or [redacted]

Sincerely,

Ted Michaels
President